IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2023 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KOKILABEN W/O DILIPSINH UDESINH JHALA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2023 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR RC KODEKAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/07/2003

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu who has been detained under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 1/2/2003 passed by the Police Commissioner, Ahmedabad City and she has been declared as "bootlegger".

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he/she cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned counsel for the petitioner at length and learned AGP, Mr.Kodekar for the respondents. I have also perused the material on record. Learned counsel for the petitioner has submitted that the detaining authority has passed the detention order relying upon five offences registered against the detenu under the Bombay Prohibition Act. The learned counsel for the petitioner has further submitted that the last offence is registered on 29/11/2002 and the detaining authority has passed the impugned detention order on 1/2/2003 and hence, according to the learned counsel for the petitioner detenu, there is a delay of more than two months in passing the order. Learned AGP has fairly admitted the same. In support of the arguments, learned counsel for the petitioner detenu has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that last offence registered against the petitioner on 29/11/2002 and order of detention has been passed on 1/2/2003 and hence, there is a delay of more than two months in passing the order. No affidavit has been filed by the respondents explaining the delay

satisfactorily, caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned counsel for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned counsel for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The impugned order of detention dated 1/2/2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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